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11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

12 **COMMISSIONERS**

13 TOM FORESE, Chairman  
14 BOB BURNS  
15 DOUG LITTLE  
16 ANDY TOBIN  
17 BOYD DUNN

17 IN THE MATTER OF THE  
18 APPLICATION OF ARIZONA PUBLIC  
19 SERVICE COMPANY FOR A HEARING  
20 TO DETERMINE THE FAIR VALUE OF  
21 THE UTILITY PROPERTY OF THE  
22 COMPANY FOR RATEMAKING  
23 PURPOSES, TO FIX A JUST AND  
24 REASONABLE RATE OF RETURN  
25 THEREON, TO APPROVE RATE  
26 SCHEDULES DESIGNED TO DEVELOP  
27 SUCH RETURN.

23 IN THE MATTER OF FUEL AND  
24 PURCHASED POWER PROCUREMENT  
25 AUDITS FOR ARIZONA PUBLIC  
26 SERVICE COMPANY.

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DOCKET CONTROL

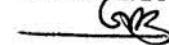
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Arizona Corporation Commission

**DOCKETED**

APR 26 2017

DOCKETED BY



DOCKET NO. E-01345A-16-0036

**OBJECTION TO COMMISSIONER  
BURNS' DEMAND FOR TESTIMONY**

DOCKET NO. E-01345A-16-0123

1 As the ultimate decision-makers, Commissioners play *the* central role in all  
2 Commission proceedings. This proceeding is no exception. It is critically important to  
3 APS that Commissioners receive all information they need to make an informed  
4 decision about the relief requested in this proceeding—the request from 29 parties that  
5 the March 27, 2017 Settlement Agreement submitted in this docket be approved as  
6 written. APS acknowledges that it is customary for Commissioners to ask questions of  
7 witnesses during the course of a hearing before the Commission. APS also notes that if a  
8 Commissioner does not receive the information that they need, they may not be able to  
9 vote in favor of the relief requested.

10 The appropriate scope of information in this proceeding, however, is well  
11 established: the expenses, revenues, and customer-related information related to the  
12 2015 Test Year; APS's investments that are used and useful in providing electrical  
13 service; and APS's cost of capital, among other traditional categories of rate case  
14 information. This scope stems from due process, which is the paramount constitutional  
15 protection afforded all parties in regulatory proceedings. *See State ex. rel. Corbin v.*  
16 *Arizona Corporation Commission.*<sup>1</sup> The letter that Commissioner Burns' filed on April  
17 21 and the questions filed on April 24, 2017 ("Letters"), however, are not tethered nor  
18 relate to this well-established scope of information. Accordingly, APS objects to the  
19 Letters and requests that it be relieved of any obligation to respond beyond providing  
20 relevant rate case-related information.

21 **I. THE LETTERS SEEK IRRELEVANT INFORMATION, WOULD**  
22 **CIRCUMVENT LEGAL PROCESS, AND VIOLATE DUE PROCESS.**

23 The Letters would inappropriately expand these proceedings by seeking (i)  
24 information unrelated to this rate case; and (ii) testimony from non-rate case witnesses.  
25 As the party seeking relief, APS is entitled to determine how it will prove its affirmative  
26 case, and bears the risk that it will be unable to prove its case with the witnesses it has  
27

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28 <sup>1</sup> 143 Ariz. 219 (Ct. App. 1984).

1 selected. It is inappropriate for a Commissioner to expand these proceedings beyond  
2 what is relevant, and to force APS to prove its case in a particular fashion.

3 Moreover, the Letters suffer from three unrecoverable legal flaws:

- 4 (1) Pinnacle West not a party. The Letters demand the appearance of Pinnacle West  
5 Capital Corporation, an entity that is not a party to this proceeding. Not only is  
6 this inappropriate, but the demand is without appropriate process;
- 7 (2) Must file a motion to compel. The Letters seek information that has already been  
8 sought in a subpoena to which APS (and Pinnacle West) have properly objected,  
9 but for which no motion to compel has been filed.<sup>2</sup> To the extent that  
10 Commissioner Burns seeks the information in the Letters, the only available  
11 course is for him to file a motion to compel; and
- 12 (3) Authority subject of an ongoing lawsuit. The Letters invoke unilateral authority  
13 that is uncertain, and the ability of Commissioner Burns to invoke this authority  
14 is the subject of an ongoing lawsuit in Maricopa County Superior Court.  
15 Providing the information sought in the Letters would circumvent that lawsuit,  
16 undermine the jurisdiction of the superior court, and violate APS's due process  
17 rights related to that lawsuit.

18 The type of information sought by the Letters, and the manner by which the Letters seek  
19 that information, are improper. At a minimum, important legal questions must be  
20 resolved before any discussion regarding the content of the Letters can proceed,  
21 including the nature and scope of any applicable due process and other constitutional  
22 rights.

#### 23 **IV. APS HAS ALREADY ANSWERED COMMISSIONER BURNS' 24 QUESTIONS MANY TIMES IN WRITING AND IN PERSON.**

25 Underscoring APS's concern with the Letters is that this is not the first time that  
26 Commissioner Burns has sought the information identified in the Letters. As early as  
27 2013, Commissioner Burns has been seeking this information from APS. Commission  
28 dockets in which Commissioner Burns has asked for information and APS has  
responded include:

A) Docket No. E-01345A-13-0248 APS Application for Net Metering Solution;

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<sup>2</sup> APS and Pinnacle West also filed a Renewed Motion to Quash the subpoena in question, but that Motion was never ruled upon. Because the April 21st and 24th letters seek similar information from APS that was previously sought in Commissioner Burns' subpoena, APS reasserts the Renewed Motion to Quash.

- 1 B) Docket No. E-01345A-11-0024 [LFCR Open Meeting] APS Application for  
Hearing for Ratemaking Purposes (2010 TY);
- 2 C) Docket No. E-00000J-13-0375 Inquiry into Potential Impacts to Current Utility  
3 Model Resulting from Innovation and Technological Development in Generation  
and Delivery of Energy;
- 4 D) Docket No. AU-00000A-15-0309 Generic Docket regarding the Campaign  
5 Contribution Practices of Public Service Corporations and other entities that  
appear before the Commission;
- 6 E) Docket No. AU-00000E-16-0270 Inquiry into Influences on Electricity  
7 Regulation in Arizona;
- 8 F) Docket No. E-01345A-16-0036 APS Application for Hearing for Ratemaking  
Purposes (2015 TY); and,
- 9 G) Docket No. RU-00000A-17-0035 Development of New Transparency and  
10 Disclosure Rules related to Financial Expenditures by Regulated Monopolies,  
Intervenors and other Stakeholders.

11 Moreover, since October 2013, APS has responded in writing to questions and  
12 discussed topics related to the Letters on numerous occasions. And more recently, APS  
13 met with Commissioner Burns to discuss these topics and answer his questions on three  
14 separate occasions: October 5, 2016, October 19, 2016, and January 3, 2017. Finally,  
15 APS has answered a large number of data responses in this docket that relate to the  
16 topics raised in the Letters. A list of data requests and a description of the information  
17 provided by APS is attached as Exhibit A to this Objection.

18 APS takes providing information to Commissioners very seriously, and has  
19 provided all appropriate information to Commissioner Burns in several ways and on  
20 several occasions. It may be that Commissioner Burns does not agree with APS's  
21 answers, like their content, or believe that APS has fully responded. The legal process  
22 for Commissioner Burns to obtain more information, however, is clearly established,  
23 and includes a motion to compel, and the opportunity for any party to appeal the  
24 outcome of that motion if appropriate. That legal process is important because it not  
25 only protects the rights of all involved, but also ensures that Commissioner Burns will  
26 receive all information to which he is legally entitled.

27

28

1 APS has provided all information it can through various regulatory channels.  
2 Commissioner Burns must now pursue his available legal remedies if he seeks more  
3 information. The Letters inappropriately abandon those legal remedies, and the legal  
4 protections afforded to all by those legal protections, and instead seek to improperly  
5 undermine this proceeding and violate due process.

6 **V. INQUIRIES REGARDING PINNACLE WEST ARE IRRELEVANT TO**  
7 **THE RATE CASE SETTLEMENT.**

8 This proceeding was initiated by APS to set just and reasonable rates for the  
9 services the company provides its customers. The pending hearing relates to the  
10 Settlement Agreement that parties to the case, including APS, Commission Staff, RUCO  
11 and representatives of the solar industry have reached. Commissioner Burns' inquiries  
12 regarding Pinnacle West, who is neither the applicant nor a party to this proceeding or  
13 the Settlement Agreement, is irrelevant to the merits of whether the Settlement  
14 Agreement is in the public interest. Commissioner Burns' sole interest in Pinnacle West  
15 information relates to his attempts to ignore APS's and Pinnacle West's First  
16 Amendment rights to force public disclosure of past charitable and political  
17 contributions. Those efforts are the subject of ongoing judicial and regulatory  
18 proceedings unrelated to this consolidated docket. Commissioner Burns should not be  
19 allowed to use this docket circumvent Pinnacle West's rights and, in doing so,  
20 undermine APS's due process rights.

21 **VI. INQUIRIES OUTSIDE OF THE TEST YEAR ARE IRRELEVANT TO**  
22 **THE RATE CASE SETTLEMENT.**

23 None of Commissioner Burns' areas of inquiry that deal with information prior to  
24 or after the twelve month calendar year of 2015 are relevant to the Commission's  
25 determination of whether the Settlement Agreement is in the public interest and should  
26 be approved. When setting rates, the Commission reviews the utility's books and records  
27 for a "test year"—a specified twelve-month period—and uses data from that test year to  
28 determine the amount of revenue the utility requires in order to cover its costs. *See Ariz.*



1 Admin. Code R14-2-103; *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*<sup>3</sup> (describing  
2 Commission's use of "test year from which to project the future capital expenditures and  
3 income needs of the utility" when considering rate adjustment). Specifically, the  
4 Commission examines all of the operating expenses claimed by the utility as well as the  
5 utility's invested capital. The utility is permitted to earn a fair rate of return on the  
6 latter.

7 The Commission Staff performs an extensive and detailed review to ensure that  
8 the operating expenses claimed by the utility are in fact recoverable. Based on the  
9 operating expenses claimed by the utility and deemed to be recoverable, and based on  
10 the utility's invested capital multiplied by a fair rate of return, the Commission  
11 determines the utility's revenue requirement. It then uses that revenue requirement to  
12 set the rates that the utility will collect going forward. *See Residential Util. Consumer*  
13 *Office v. Ariz. Corp. Comm'n*<sup>4</sup> (describing principle that rates should be sufficient to  
14 cover "utility's operating costs" and to give "a reasonable rate of return on the utility's  
15 investment").

16 APS's rate application in this case is based on a 2015 test year. In other words,  
17 rates will be based solely on the operating expenses incurred by APS in 2015 and its rate  
18 base in that year. Any operating expenses incurred by APS in any other year are  
19 categorically irrelevant to the Commission's task in setting rates. Consequently,  
20 Commissioner Burns' proposed questions concerning expenses in other time periods are  
21 irrelevant to the Commission's task. As succinctly stated by Commissioner Little  
22 regarding expenses in 2014:

23 ...expenses outside of a test year are never included in rates. 2014 was not  
24 and will not be a test year in any APS rate case. Therefore, there is no  
25 avenue for 2014 expenses (other than those specified to be included in  
26 certain adjuster mechanisms) to ever influence APS' rates.

27 

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<sup>3</sup> 132 Ariz. 240, 246 (App. 1982).

28 <sup>4</sup> 199 Ariz. 588, 591 (App. 2001).

1 The same is true of any other expenses outside of the 2015 Test Year in this proceeding,  
2 and the information sought by the Letter far exceeds what could possibly be relevant in  
3 this proceeding.

4 **VII. AUDITS CONFIRM THAT APS IS NOT SEEKING TO RECOVER**  
5 **CHARITABLE, POLITICAL, OR LOBBYING EXPENSES.**

6 The only operating expenses incurred in 2015 that are relevant to the  
7 Commission's rate-setting are those claimed by APS as recoverable from ratepayers. As  
8 APS has previously stated, it agrees and ensures that any charitable, political, or  
9 lobbying expenditures should not be treated as operating expenses recoverable in rates.  
10 APS has made clear that it does not, has not, and will not seek to include any political  
11 contributions in the costs it seeks to recover from ratepayers.<sup>5</sup>

12 Moreover, the Commission has made clear that charitable contributions may not  
13 be included in rates. *See In re Application of Sulphur Springs Valley Elec. Coop., Inc.*<sup>6</sup>  
14 ("Although we recognize their importance to the community, we do not believe that  
15 charitable contributions and sponsorships are appropriate above-the-line expenses that  
16 should be collected from ratepayers.") Thus, any charitable contributions are made from  
17 non-operating, or below-the-line, funds that are not included in rates.

18 Similarly, APS does not include lobbying expenses in the costs it seeks to recover  
19 from customers. The Commission has held that if APS does seek to recover any of its  
20 lobbying costs in rates as useful to customers, "APS must provide the itemized lobbying  
21 costs associated with each benefit it alleges resulted from the specific lobbying activity."  
22 *In re Arizona Pub. Serv. Co.*<sup>7</sup>

23 As part of the rate case process, Commission Staff ensures that utilities, like APS,  
24 do not include in rates the types of expenses identified in the Letters. APS did not  
25 include any charitable, political, or lobbying expenditures in its 2015 operating expenses  
26 that will become the basis of new rates set by this proceeding. Through an extensive and

27 <sup>5</sup> Letter from Donald E. Brandt, Docket No. AU-00000A-15-0309 (Dec. 29, 2015).

28 <sup>6</sup> 2009 WL 2983260 (A.C.C. Sept. 8, 2009).

<sup>7</sup> 258 P.U.R.4th 353 (A.C.C. June 28, 2007).

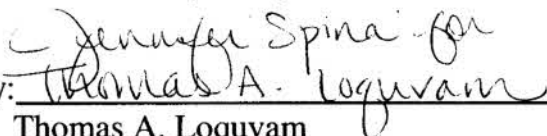
1 detailed review, Commission Staff has audited APS's 2015 books and confirmed that  
2 this is the case. Accordingly, Commissioner Burns's inquiry into such expenses for 2015  
3 has already been resolved.

#### 4 **VIII. CONCLUSION**

5 This proceeding is about the merits of a rate case Settlement Agreement. The  
6 evidence in the record overwhelmingly demonstrates that the Settlement Agreement is in  
7 the public interest and that its rates are just and reasonable. APS is unwavering in its  
8 support of the Settlement Agreement, and in its commitment to provide the Commission  
9 with all necessary information to analyze the Settlement Agreement.

10 Commissioner Burns' Letters, however, are not appropriate for this rate case  
11 Settlement Agreement proceeding. The Letters would improperly expand this  
12 proceeding and violate due process rights. APS understands that Commissioners need  
13 sufficient information to make an informed decision in this proceeding. APS also  
14 understands that if a Commissioner does not receive sufficient information, that  
15 Commissioner might not be able to vote in favor of the relief requested. But to the extent  
16 that the Letters seek information beyond what is relevant to this proceeding, APS  
17 requests that it be relieved of any obligation to produce additional witnesses or  
18 otherwise respond. APS requests that the Commission protect the integrity of this  
19 proceeding by granting APS's objections to Commissioner Burns' irrelevant inquiries.

20  
21 **RESPECTFULLY SUBMITTED** this 26th day of April 2017.

22  
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# EXHIBIT A

### **Timeline of APS Responses to Commissioner Burns**

- 11/6/13** APS response to Commissioner Burns on Net Metering Public Relations spending
- 12/20/13** APS letter to Commissioner Burns on Public Relations Expenditures for retail competition
- 2/14/14** APS letter to Commissioner Burns on PNW expenditures on public relations for net metering and deregulation
- 10/23/15** Don Brandt letter to Commissioners Bitter Smith and Burns in response to 9/8 letter on campaign contributions
- 9/9/16** APS letter in rate case docket from B. Lockwood
- 9/12/16** APS sends letter to Commissioner Burns re: subpoenas in rate case
- 9/15/16** APS provides publicly-available documents identified in subpoenas to Commissioner Burns office and files in rate case docket
- 3/3/17** APS/Pinnacle West files comments and PNW Political Participation Policy in Transparency docket
- 4/17/17** APS responds to Commissioner Burns rate case questions

Relevant Data Request Responses for Commissioner Burns Subpoena Questions (Rate Case Docket):

Topic	Data Request	Information Provided
General Ledger	Pre-Filed 1.4	Complete GL 2014-2015
General Ledger	Pre-Filed 1.6	Accounting manual
General Ledger	Staff 1.3	Complete GL 2016
General Ledger	Staff 11.2	GL Detail for Schedule B-2
Donations	Pre-Filed 1.54	EEI Foundation (EEI dues)
Donations	Pre-Filed 1.64	Donations in COSS (none)
Donations	Staff 1.27	See Pre-Filed 1.64
Donations	EFCA 3.1	EEI Foundation
Contributions	EFCA 4.4	To AIC
Contributions	Staff 15.5	To any PAC
FERC Accounts	Pre-Filed 1.2	FERC Form 1 2013-2015
FERC Accounts	Pre-Filed 1.5	FERC Chart of Accounts
FERC Accounts	Pre-Filed 1.8	O&M by FERC account
FERC Accounts	Pre-Filed 1.12	Schedule C-1 by FERC account
FERC Accounts	Pre-Filed 1.38	Advertising by FERC account 2015
FERC Accounts	Staff 3.43	O&M by FERC account
FERC Accounts	Staff 8.10	Advertising Budget 2016
FERC Accounts	Staff 10.7	Further breakout of 1.38 above
EEI dues	Pre-Filed 1.54	2014 and 2015 invoices
EEI dues	Staff 1.28	2016 invoice
EEI dues	Staff 10.8	Explanation of specific amounts
EEI dues	Staff 10.9	EEI budgets (APS doesn't have)
EEI dues	Staff 11.6	EEI core activity breakout
EEI dues	EFCA 10.15	Description of EEI services
EEI dues	EFCA 3.1	EEI expense requested in TY
Lobbying	Pre-Filed 1.50	Lobbying costs in TY (none)
Lobbying	Pre-Filed 1.54	EEI dues for lobbying
Lobbying	Staff 1.21	See Pre-Filed 1.50
Lobbying	Staff 1.28	EEI Lobbying costs
Lobbying	EFCA 3.1	EEI Lobbying costs
Lobbying	Staff 10.8	How EEI lobbying derived
Lobbying	Staff 12.22	EPRI Lobbying costs (none)
Lobbying	EFCA 10.16	Total lobbying costs in TY
Advertising	Pre-Filed 1.38	Itemization of advertising expense
Advertising	EFCA 3.1	Advertising in EEI dues
Advertising	Staff 8.10	Advertising budgets for 2016-17
Advertising	Staff 10.7	Detail for Pre-Filed 1.38
Advertising	Staff 11.6	Advertising in EEI dues

Topic	Data Request	Information Provided
Advertising	Staff 12.21	Additional detail
Advertising	Staff 15.7	Tax allocation PNW/APS
Advertising	ACAA 1.29	E-3 and E-4 advertising
Advertising	Woodward 2.20	Mandatory demand advertising
Advertising	Woodward 2.21	Smart meter advertising
Advertising	Woodward 2.33	Who pays for advertising
Advertising	RUCO 6.16	SPP advertising
Political Spending	Staff 15.5	PAC costs in COSS (none)